

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 410 of 1998

AND

SPECIAL CRIMINAL APPLICATION NO.431 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DEPUTY CONSERVATOR OF FOREST

Versus

SHANTARAM MURLIDAHAR PAWAR

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Appearance: SPECIAL CRIMINAL APPLICATION NO 410/98

MR SR DIVETIA APP for Petitioners  
MR SAURIN A SHAH for Respondent No. 1

SPECIAL CRIMINAL APPLICATION NO. 431/98

MR SAURIN A SHAH for the petitioner.  
MR SR DIVETIA APP for the respondents.

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/07/98

ORAL JUDGEMENT

Heard learned advocate Mr. Saurin A.Shah and  
learned APP Mr.S.R.Divetia, for the respective parties.

Both these petitions challenge the judgment and order dated 24th March, 1998, passed by the learned Sessions Judge, Valsad, in Criminal Appeal No.1/98 preferred by the petitioner in Special Criminal Application No.431/98. The facts leading to the present petitions are as under :

The petitioner in Special Criminal Application No.431/98 (hereinafter referred to as "the owner") is the registered owner of a truck bearing registration No. GTT-4242. The said truck was intercepted by Forest Officer near Vaghai Check Post on 27th August, 1997. The said truck was found to be transporting forest produce i.e. teakkwood worth Rs.60,000/- without permit. Thus, a forest offence having been committed, a Forest Offence No. 1/97-98 was registered against the Driver Gulabbhai Somabhai and two others, one of them being the son of the owner. Pursuant to the said offence, confiscation proceeding was initiated by the Deputy Conservator of Forests, South Dangs Division, Ahwa. Under the judgment and order dated 23rd December, 1997, the Deputy Conservator of Forests, South Dangs Division, ordered to confiscate the truck belonging to the petitioner which was used for commission of the forest offence. Feeling aggrieved, the owner preferred Criminal Appeal No.1/98 before the learned Sessions Judge, Valsad. Under the judgment and order dated 24th March, 1998, the said appeal was partly allowed. The order of confiscation of the truck made by the Deputy Conservator of Forests, South Dangs Division, was set aside and instead a penalty of Rs.25,000/- was imposed upon the owner. Feeling aggrieved, the State Government as well as the owner have preferred the above writ petitions respectively.

Mr. Divetia has submitted that the truck in question was transporting forest produce worth Rs.60,000/- without permit and considering the gravity of the forest offence, the penalty of Rs.25,000/- imposed upon the owner is inadequate and the penalty should be enhanced and such penalty should be comparable with the value of the goods transported without permit.

Mr. Shah has submitted that the order of confiscation made by the Deputy Conservator of Forests, South Dang Division is void and illegal. He has submitted that the said order has been made without affording an adequate opportunity to the owner to defend the proceeding initiated against him. He has submitted that in course of investigation, the Forest Officer concerned had recorded the statements of the driver and the son of the owner who is alleged to be travelling in the said truck. The statement of one Namdev Gowli-a

Forest Officer, on whose instruction the forest produce in question was being transported, was also recorded. A panchnama was drawn and the statement of Naka Guard was also recorded. All the aforesaid documents have been relied upon by the Deputy Conservator of Forests for proving the guilt which is the basis of the order of confiscation of the truck. It was, therefore, essential to provide copies of the said documents to the owner. In absence of the copies of the said documents, the owner had no way to know what was the material that would be used against him and the owner had no opportunity to defend himself by proving the correctness or otherwise of the said documents. Mr. Shah has, therefore, submitted that the inquiry conducted by the Deputy Conservator of Forests, South Dangs Division, is void-ab-initio and no confiscation order or order of penalty could be passed on the finding recorded by the Deputy Conservator of Forests relying upon the material as aforesaid. The owner could not examine any of the persons whose statements were recorded in course of investigation. Mr. Divetia has contested the petition preferred by the owner and has submitted that no such contention was raised either before the Deputy Conservator of Forests or before the appellate court and such a contention can not be permitted to be raised for the first time here before this court. He has further contended that neither before the Deputy Conservator of Forests, nor before the appellate court, the petitioner had made an application for supply of the copies of such documents and, therefore, also the contention raised before this court is too belated to be entertained .

I am afraid, Mr. Divetia is not right. The owner did make an application to the Deputy Conservator of Forests on 22nd November, 1997, calling for the copies of the documents. Mr. Divetia is also not right in contending that the contention was not raised either before the Deputy Conservator of Forests or before the appellate court. A specific contention in that behalf has been raised before the appellate court also. In my view Mr. Shah is right in contending that the owner has not been given a fair opportunity of defence. While conducting confiscation proceedings under section 61-A of the Indian Forests Act, 1927, the Deputy Conservator of Forests is a quasi judicial authority and the confiscation proceedings being quasi judicial in nature, the owner should be given fair opportunity of defence. Merely by serving a show cause notice, the principles of natural justice can not be satisfied. It is imperative for the quasi judicial authority to furnish all the material upon which reliance is placed to prove the

guilt. In the present case, it is undisputed that no such material was furnished to the owner. I, however, do not agree with the contention of Mr. Shah that the principles of natural justice require that the owner be permitted to cross-examine the persons whose statements have been recorded in course of investigation. It is well settled proposition of law that a right to cross-examine a witness accrues only if such witness has given oral deposition before the court or before the authority. A statement recorded is a piece of document and the question of cross-examining such person, as a matter of right, does not arise (reference can be had to the judgment of the Supreme Court in the matter of STATE OF J & K VS BAKSH GULAM MOHAMMAD & ANR {AIR, 1967, SC P-122-Para 22})

In view of the above facts, it is clear that the owner had not been afforded a fair opportunity to defend the confiscation proceedings conducted by the Deputy Conservator of Forests, South Dangs Division. The learned Sessions Judge is not right in holding that the owner had been afforded an adequate opportunity to defend himself. In that view of the matter, the judgment and order dated 27th December, 1997, passed by the Deputy Conservator of Forests, South Dangs Division, in Confiscation proceedings No.A/offence/2565/69 of 1997-98, requires to be quashed and set aside. Consequently, judgment and order dated 24th March, 1998 of the learned Sessions Judge, Valsad, passed on Criminal Appeal No.. 1/98 is also quashed and set aside. The matter is remanded to the Deputy Conservator of Forests, South Dangs Division, Ahwa, for re-hearing and disposal after affording a fair opportunity to the owner by supplying him all the documents on which reliance is placed. The Deputy Conservator of Forests, South Dangs Division shall dispose of the matter within a period of one month from the date of furnishing the copies of the documents, as directed hereinabove. The truck bearing No. GTT-4242 lying in the custody of the Deputy Conservator of Forests, South Dangs Division, Ahwa, be released in favour of the owner on his depositing a sum of Rs.25,000/- with the Deputy Conservator of Forests, South Dangs Division, Ahwa,, and on his executing a personal bond for a sum of Rs. 40,000/- and on his furnishing surety for the like amount on condition that -

- (1) pending the proceedings, the petitioner shall not transfer or alienate the truck in question in any manner;

- (2) The petitioner shall not change the appearance or engine of the truck;
- (3) The petitioner shall not ply the truck beyond the limits of the State of Gujarat;
- (4) The petitioner shall produce the truck in question before the forests authorities if and when required.
- (5) The petitioner shall file an undertaking before this court within a period of 15 days from today to the effect that he shall abide by the above conditions and a copy of such undertaking shall be furnished to the Deputy Conservator of Forests, South Dang Division, Ahwa.;

The release of the truck under this order shall be subject to the final order that may be made by the Deputy Conservator of Forests, South Dangs Division, Ahwa, after the remand of the matter.

Special Criminal Application No.431/98 is allowed to the aforesaid extent. Rule is made absolute accordingly.

Special Criminal Application No. 410/98 is dismissed. Rule is discharged. Registry is directed to send the writ forthwith.

Parties shall bear their own costs.

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JOSHI

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